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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/568,093	11/13/2006	Pierre Lescuyer	108140.00041	7810
38485	7590	02/25/2009		
ARENT FOX LLP 1675 BROADWAY NEW YORK, NY 10019			EXAMINER COOK, LISA V	
			ART UNIT 1641	PAPER NUMBER
			NOTIFICATION DATE 02/25/2009	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

NYIPDocket@arentfox.com
Patent_Mail@arentfox.com

Office Action Summary

Application No.

10/568,093

Examiner

LISA V. COOK

Applicant(s)

LESCUYER ET AL.

Art Unit

1641

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11/13/06.
- 2a) ☐ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 23-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-12 and 23-34 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-845)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Amendment Entry

1. The preliminary amendment filed 2/10/06 is acknowledged. Claims 1-12, 24-31, and 33-34 have been modified. Claims 13-22 have been canceled. Currently claims 1-12 and 23-34 are pending and under consideration.

Election/Restrictions

2. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions, which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

To have a general inventive concept under PCT rule 13.1, the inventions need to be linked by a special technical feature. The special technical feature that appears to link claims 1-12 and 23-34 is the utility of polypeptides like Apo C-III in stroke. However, the reference of Kasturi et al. (Stroke, Vol.23, No.9, 1992, pages 1257-1264) discloses this special technical feature. Kasturi et al. disclose that the presence of known RFLPs in the apoprotein A-I-C-III gene cluster were restricted with SacI and PstI and assessed for stroke risk in an American population. See abstract. Therefore the technical feature recited in claims 1-12 and 23-34 is not a contribution over the prior art. Accordingly the groups set forth below are not so linked as to form a single general concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

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- A. Group I, claim(s) 1-12 are drawn to a method of diagnosing stroke via a polypeptide such as Apo C-III; classified in class 435, subclass 7.21, for example. (A 1st first method employing a special technical feature).
- B. Group II, claim(s) 23-31 are drawn to an assay device for diagnosing stroke; classified in class 435, subclass 283.1, for example. (A 1st device employing the special technical feature).
- C. Group III, claim(s) 32-34 are drawn to kits comprising reagents for analyzing stroke; classified in class 422, subclass 61, for example. (A 1st product comprising a special technical feature).

3. The inventions listed as Groups A through C do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: Under PCT rules Applicant is entitled to an examination of one of the combination groupings: (1) a product, a method of using said product and a method of producing said product. The instant claims are directed to inventions which are not a contribution over the prior art. Accordingly, Applicant must select one for further prosecution.

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4. Because these inventions are distinct for the reasons given above, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and the search required for Group A through C are not totally inclusive, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

5. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement is traversed (37 CFR 1.143).

6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(l).

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7. Papers related to this application may be submitted to Group 1600 by facsimile transmission. Papers should be faxed to Group 1600 via the PTO fax center located in Crystal Mall 1. The faxing of such papers must conform to the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The Group 1641 Fax number is (571) 273-8300, which is able to receive transmissions 24 hours/day, 7 days/week.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lisa V. Cook whose telephone number is (571) 272-0816. The examiner can normally be reached on Monday - Friday from 7:00 AM - 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Shibuya, can be reached on (571) 272-0806.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group TC 1600 whose telephone number is (571) 272-1600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

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Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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2/16/09

/Lisa V. Cook/
Primary Examiner, Art Unit 1641